

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

In re:)	CIVIL 16-00230 LEK-KSC
)	
SEA HAWAII RAFTING, LLC,)	
)	
Debtor.)	
)	
CHAD BARRY BARNES,)	
)	
Appellant,)	
)	
vs.)	
)	
DANE S. FIELD, TRUSTEE,)	
)	
Appellee.)	
)	

**ORDER VACATING MARCH 14, 2017 AND JUNE 26, 2017 ORDERS
AND REMANDING THE CASE TO THE BANKRUPTCY COURT
TO CONSIDER ISSUES ON REMAND FROM THE NINTH CIRCUIT**

On May 11, 2016, Appellant Chad Barry Barnes ("Appellant" or "Barnes") filed an appeal from the bankruptcy court's May 9, 2016 Order Granting Trustee's Motion for Order (I) Authorizing Sale of Boat and Trailer Under Bankruptcy Code § 363, and (II) Otherwise Granting Relief, Filed on March 29, 2016 ("5/9/16 Bankruptcy Order"). [Notice of Transmittal to District Court (dkt. no. 1).¹] On September 27, 2016, Appellee Dane S. Field, Trustee for the bankruptcy estate of Sea Hawai'i Rafting, LLC ("Trustee" or "Appellee"), filed a Motion to Dismiss Appeal. [Dkt. no. 14.] On March 14, 2017, this Court issued an

¹ Appellant filed an Amended Notice of Appeal and Statement of Election on September 1, 2016. [Transmittal of Document for Pending Appeal (dkt. no. 12).]

Order Granting Appellee's Motion to Dismiss Appeal ("3/14/17 Order"). [Dkt. no. 33.²] The primary basis of the 3/14/17 Order was the fact that Appellant did not obtain a stay of the 5/9/16 Bankruptcy Order. See, e.g., 2017 WL 988655, at *3. The 5/9/16 Bankruptcy Order, *inter alia*, authorized Appellee to sell the bankruptcy estate's interest in a boat named "The Tehani" ("the Boat") and its trailer. Appellant moved to stay the sale, but the bankruptcy court denied the motion on the ground that Appellant lacked standing to seek a stay. Id. at *1.

On March 31, 2017, Appellant filed a motion for reconsideration of the 3/14/17 Order and an errata to the motion for reconsideration. [Dkt. nos. 34, 35.] On June 26, 2017, this Court issued an Order Denying Motion to Reconsider Order Granting Appellee's Motion to Dismiss Appeal ("6/26/17 Order"), and the Clerk's Office entered the Judgment in a Civil Case. [Dkt. nos. 40,³ 41.] On June 30, 2017, Appellant filed his Notice of Appeal Without Prepayment of Fees. [Dkt. no. 42.]

On July 16, 2018, the Ninth Circuit vacated this Court's orders and remanded the case to this Court for reconsideration in light of Barnes v. Sea Hawaii Rafting, LLC, 889 F.3d 517 (9th Cir. 2018), which reversed and remanded an

² The 3/14/17 Order is also available at 2017 WL 988655.

³ The 6/26/17 Order is also available at 2017 WL 2818197.

order in CV 13-00002 ACK-RLP.⁴ [Order (dkt. no. 47).⁵] The Ninth Circuit has directed this Court to “determine whether Barnes has prudential standing to pursue this appeal.” [Id. at 1.] It also stated that either this Court or the bankruptcy court “should determine whether the bankruptcy court lacked jurisdiction to authorize the sale, and whether the sale can and should be avoided.” [Id. at 2 (citation omitted).]

Because the ruling that Appellant lacked standing to seek a stay of the sale of the Boat was the primary basis for this Court’s 3/14/17 Order, this Court concludes that both of the issues identified by the Ninth Circuit are issues the bankruptcy court should address in the first instance. This Court therefore VACATES its 3/14/17 Order and its 6/26/17 Order and REMANDS the instant case to the bankruptcy court for further proceedings. The bankruptcy court is DIRECTED to address the following issues: 1) whether Appellant had prudential standing to seek a stay of the sale of the Boat; 2) if Appellant had prudential standing, whether the bankruptcy court lacked jurisdiction to authorize the sale; and 3) whether to avoid the sale of the Boat.

⁴ The order at issue in the CV 13-00002 appeal dismissed Barnes’s *in rem* claims against the Boat for lack of jurisdiction. [CV 13-00002, Order Granting in Part and Denying in Part Pltf.’s Motion for Summary Judgment as to Unseaworthiness, Negligence Per Se, and Jones Act Negligence, and Dismissing Def. M/V Tehani for Lack of Jurisdiction, filed 12/22/15 (dkt. no. 197).]

⁵ The Ninth Circuit also issued its Mandate on July 16, 2018. [Dkt. no. 48.]

Within seven days after it has issued its written order(s) ruling on these issues, the bankruptcy court shall transmit its orders(s) to this Court. This Court will thereafter schedule a status conference to address how the remainder of the instant appeal will proceed.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, July 23, 2018.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

IN RE: SEA HAWAII RAFTING, LLC; CHAD BARRY BARNES VS. DANE S. FIELD; CIVIL 16-00230 LEK-KSC; ORDER VACATING MARCH 14, 2007 AND JUNE 26, 2017 ORDERS AND REMANDING THE CASE TO THE BANKRUPTCY COURT TO CONSIDER ISSUES ON REMAND FROM THE NINTH CIRCUIT